

# **Meeting Your Housing Obligation**

**New Hampshire Office of Energy and Planning  
14<sup>th</sup> Annual Spring Planning and Zoning Conference**

**April 28, 2007**

**Manchester, New Hampshire**

**Benjamin D. Frost, Esq., AICP  
Housing Awareness Coordinator  
New Hampshire Housing**



# Meeting Your Housing Obligation

## *A Play in Five Acts*

**Whatzit?**

**The King of Britton**

**It's Not Just the Law...**

**Just Do It**

**With a Little Help From My Friends**



# Act I

Whatzit?

***Affordability Defined***







Low Income Housing?

Subsidized Housing?

Public Housing?

Workforce Housing?



Congregation

# Affordability Defined (or maybe explained)

Affordability depends on price and the ability to pay.

**Affordability - defined in the context of who has limited access to the market. Targeting**

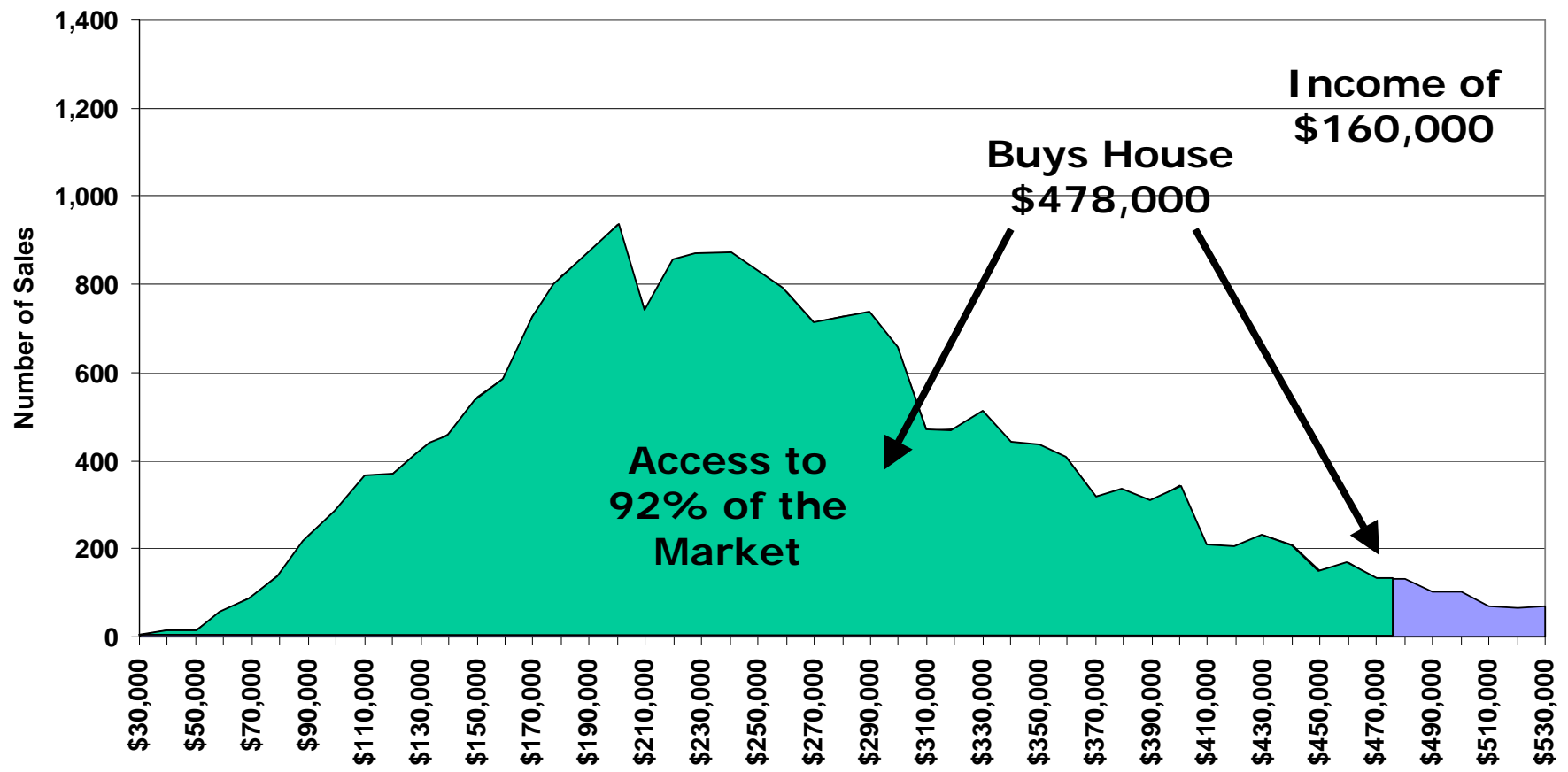
Income is an indicator of a household's ability to pay.



# Affordability Defined (or maybe explained)

## Purchase Market

Frequency of 2005 MLS Solds, Statewide, All Units



meeting their housing  
Obligation



# Income Targeting

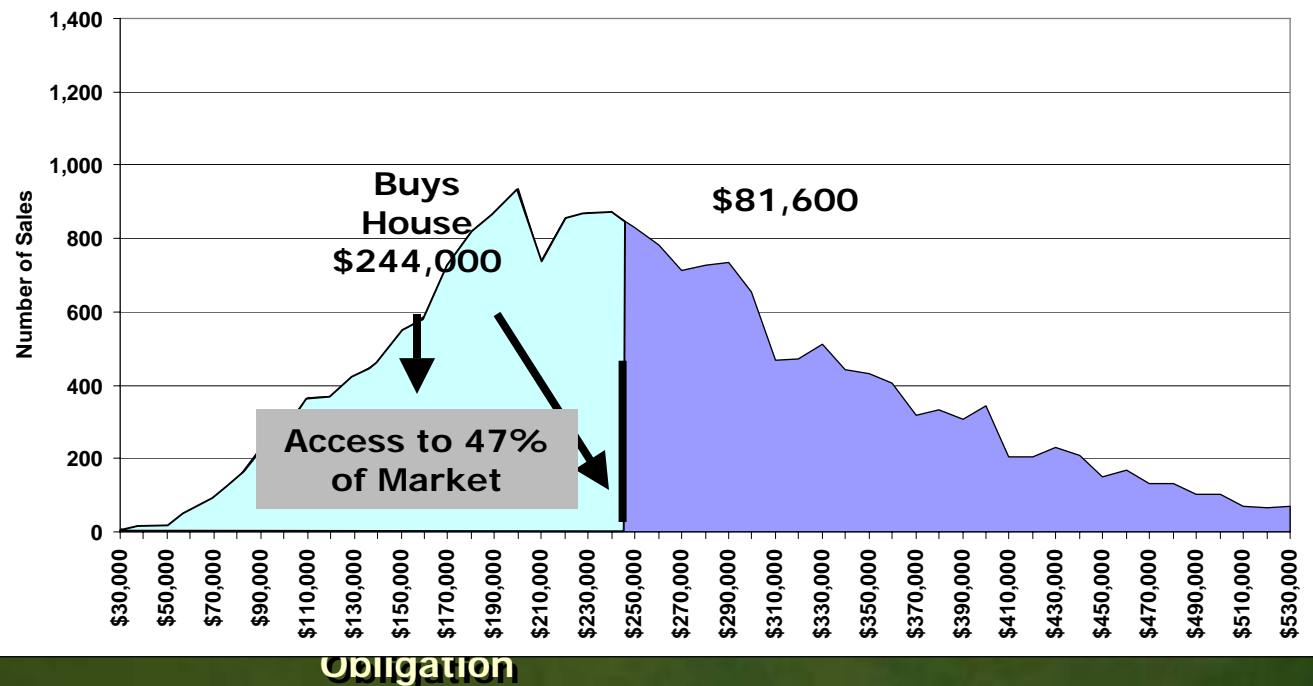
120%  
State  
Median

80%  
State  
Median

State  
Median

120%  
State  
Median

Frequency of 2005 MLS Solds, Statewide, All Units



\$10

\$20

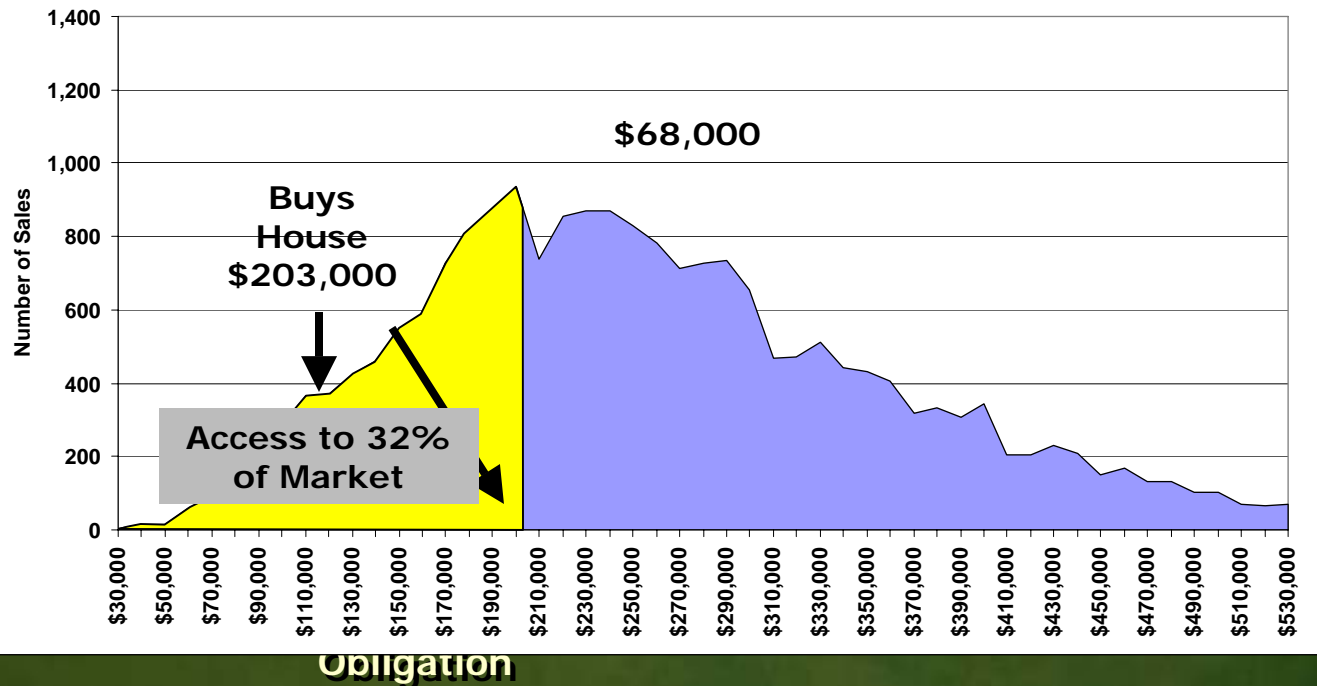


# Income Targeting

State  
Median  
80%  
State  
Median  
120%  
State  
Median

\$10  
\$20  
\$30  
\$40  
\$50  
Income in

Frequency of 2005 MLS Solds, Statewide, All Units



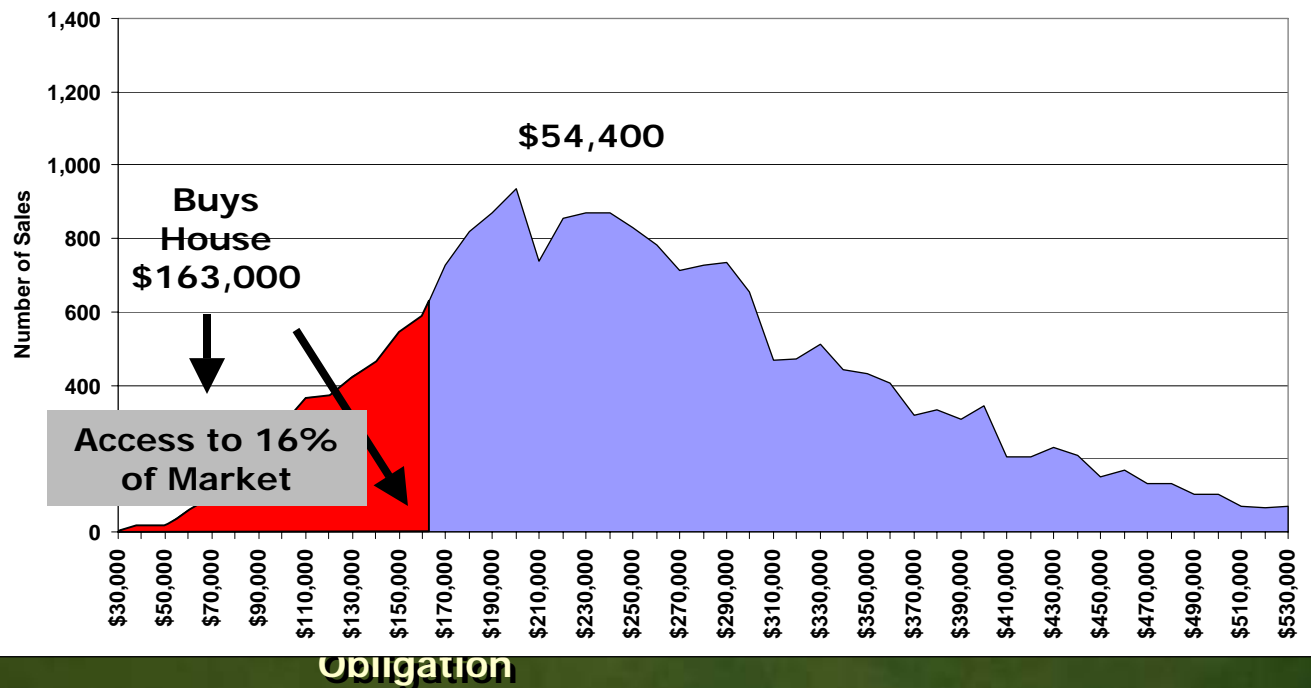


# Income Targeting

State  
Median  
80%  
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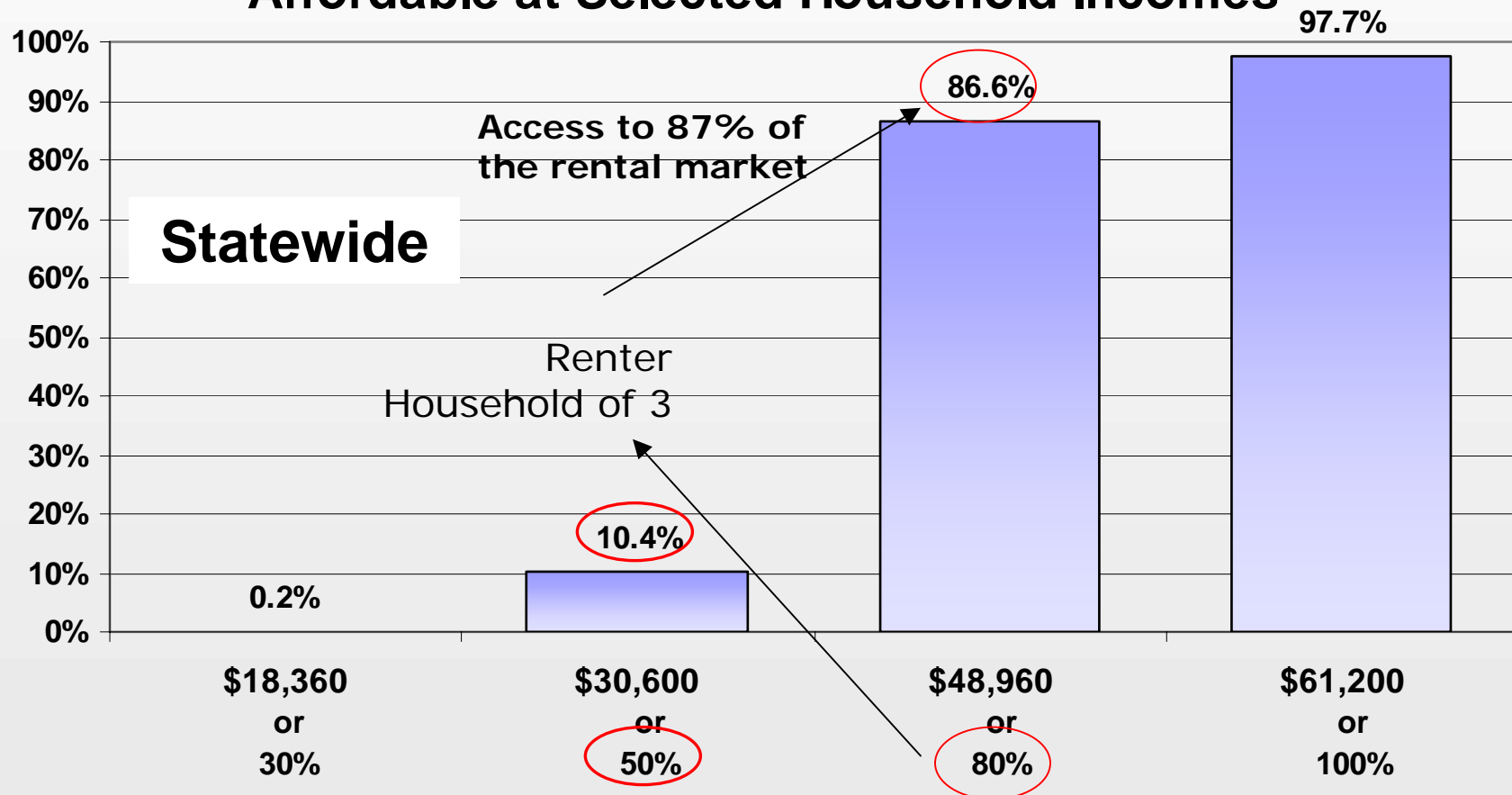
\$10  
\$20  
\$30  
\$40  
\$50  
Income in

Frequency of 2005 MLS Solds, Statewide, All Units



# Rental Market

## Percent of 2-Bedroom Units in 2005 Rental Cost Survey Affordable at Selected Household Incomes



Obligation



## New Hampshire Median Household Income By Tenure



# Affordability Defined (or maybe explained)

## What is Subsidized Housing?

Housing that is made affordable with a direct or indirect subsidy from a public body.

Most public subsidies target low income households.

Subsidized Housing = housing that is made affordable to low income households (low income housing).

## What is Public Housing?

Subsidized Housing that is owned by a public entity.





# Affordability Defined (or maybe explained)

## What is Workforce Housing?

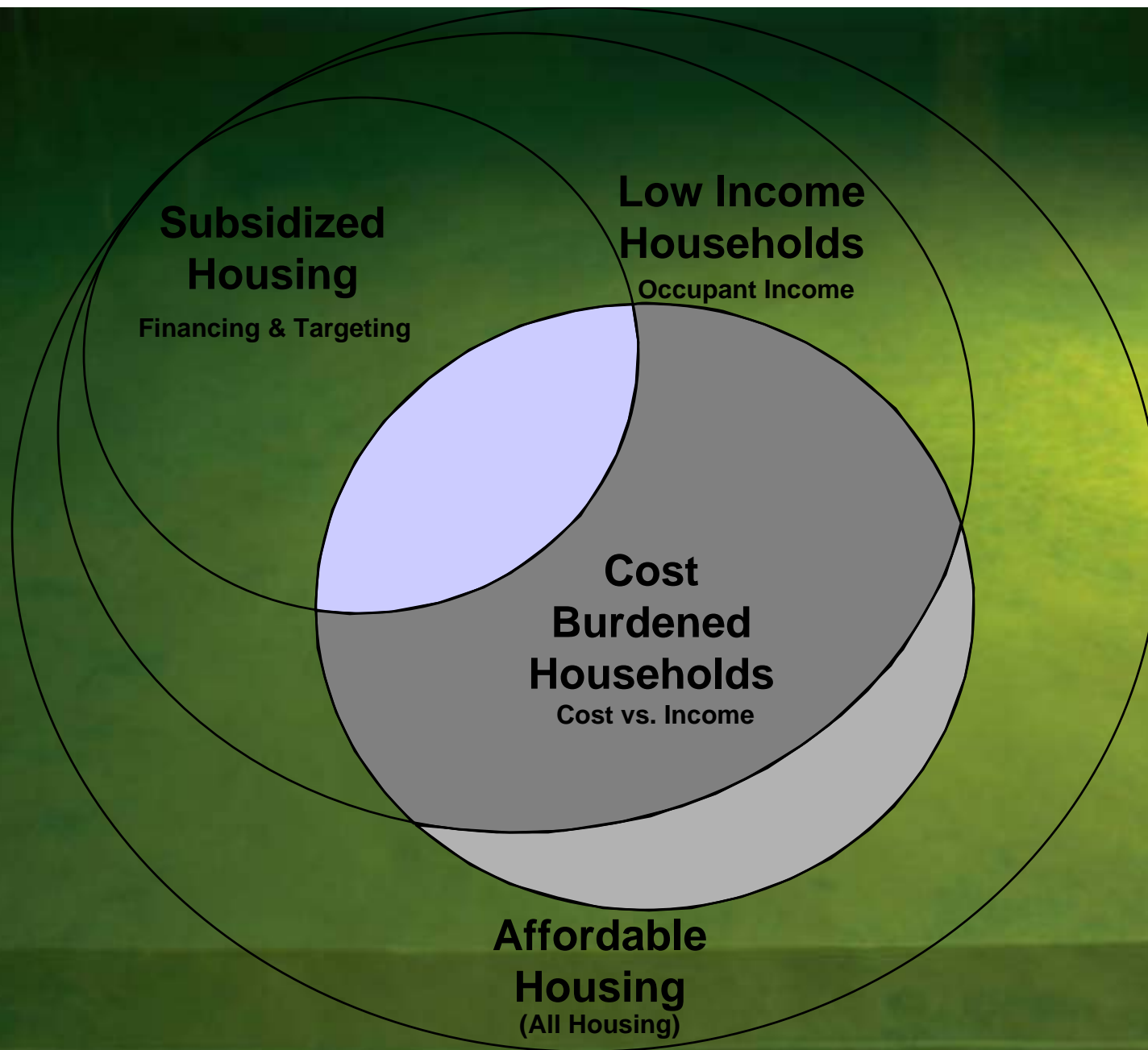
Housing that is affordable to households in the workforce without regard to subsidy.

Typically targets households with incomes representing the local labor market (usually capped).

Includes some Subsidized Housing.

Does not include retirement or most age restricted housing.





# Act II

## The King of Britton *The Legal Obligation of Municipalities*



IF A MAN'S HOME  
IS HIS CASTLE...

THEN THIS MUST  
BE THE *MOAT*.





# The Purpose of Regulation

RSA 672:1, III-e (1990). All citizens of the state benefit from a balanced supply of housing which is affordable to persons and families of **low and moderate income**. Establishment of housing which is decent, safe, sanitary and affordable to low and moderate income persons and families is in the best interests of each community and the state of New Hampshire, and serves a vital public need.

***Opportunity for development of such housing, including so-called cluster development and the development of multi-family structures, should not be prohibited or discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers...***



# The Purpose of Zoning

**RSA 674:16, I. For the purpose of promoting the health, safety, or the general welfare *of the community*, the local legislative body of any city, town, or county in which there are located unincorporated towns or unorganized places is authorized to adopt or amend a zoning ordinance**



# **Britton v. Town of Chester (1991)**

134 N.H. 434

## **Zoning:**

**Multi-family structures allowed in PRDs**

**PRDs allowed in R-2 districts**

**After deducing wetlands and steep slopes, only  
1.73% of the town's land area remained zoned  
and suitable for PRD development**

**Planning board's review criteria were "without  
reference to any objective criteria."**

- **Including the ability to hire an independent consultant  
(but see RSA 673:16 and 676:4, I(g))**



## **Britton (cont'd)**

**Action brought by a series of low- and moderate income families who lived in Chester, or who wanted to live in Chester; also brought by a builder committed to the construction of affordable housing.**





## Britton (cont'd)

### Community?

**“Municipalities are not isolated enclaves, far removed from the concerns of the area in which they are situated. As subdivisions of the State, they do not exist solely to serve their own residents, and their regulations should promote the general welfare, both within and without their boundaries. Therefore, we interpret the general welfare provision of the zoning enabling statute, RSA 674:14, to include the welfare of the ‘community,’ as defined in this case, in which a municipality is located and of which it is part.”**



# Britton in Context

**Beck v. Town of Raymond, 118 N.H. 793 (1978)**

**“...each municipality [should] bear its fair share of the burden of increased growth.”**

**“Towns may not refuse to confront the future by building a moat around themselves and pulling up the drawbridge.”**

**Britton: “The town of Chester appears willing to lower that bridge only for people who can afford a single-family home on a two-acre lot or a duplex on a three acre lot. Others are realistically prohibited from crossing.”**

**Upshot of Britton: *The Builder’s Remedy!***



# Britton's Stunted Family Tree

Great Bridge Properties v. Town of Ossipee,  
(Strafford County 04-E-110) (2005)

Zoning: multi-family uses only in existing structures, and limited to four units per structure; only one principal structure per parcel; requires sewer hookup

Site: 3.5 of 9 acres to be developed; ready highway access, no wetlands

Development: six 4-unit structures





# Britton's Stunted Family Tree (cont'd)

## Great Bridge Properties v. Ossipee

### ZBA Chairman at Hearing on Variances:

"I will say that I have joined this Board as many other people did because they disagreed with some things in here and thought that reasonable minds should be present for further interpretation. I will also say that it is my thought that when this ordinance was written it was known at the time that it was exclusionary. It was written exactly for that reason. ... I believe the spirit of this ordinance was to deny the opportunity for multi-family housing to go forward in this town. I believe that's the intent of the ordinance whether it's right or wrong."



**...and this is what they look like.**





# Act III

**It's Not Just the Law**

***The Economy and a Diverse  
Housing Supply***



# The Backdrop for Housing Growth Concerns

Education typically represents 2/3 of local spending.

Conventional wisdom suggests that housing growth leads to school overcrowding

The  
All-American  
Family



# Reality Check: Student Generation by New Units

*The Thibeault Study (2005)*

## Case Studies

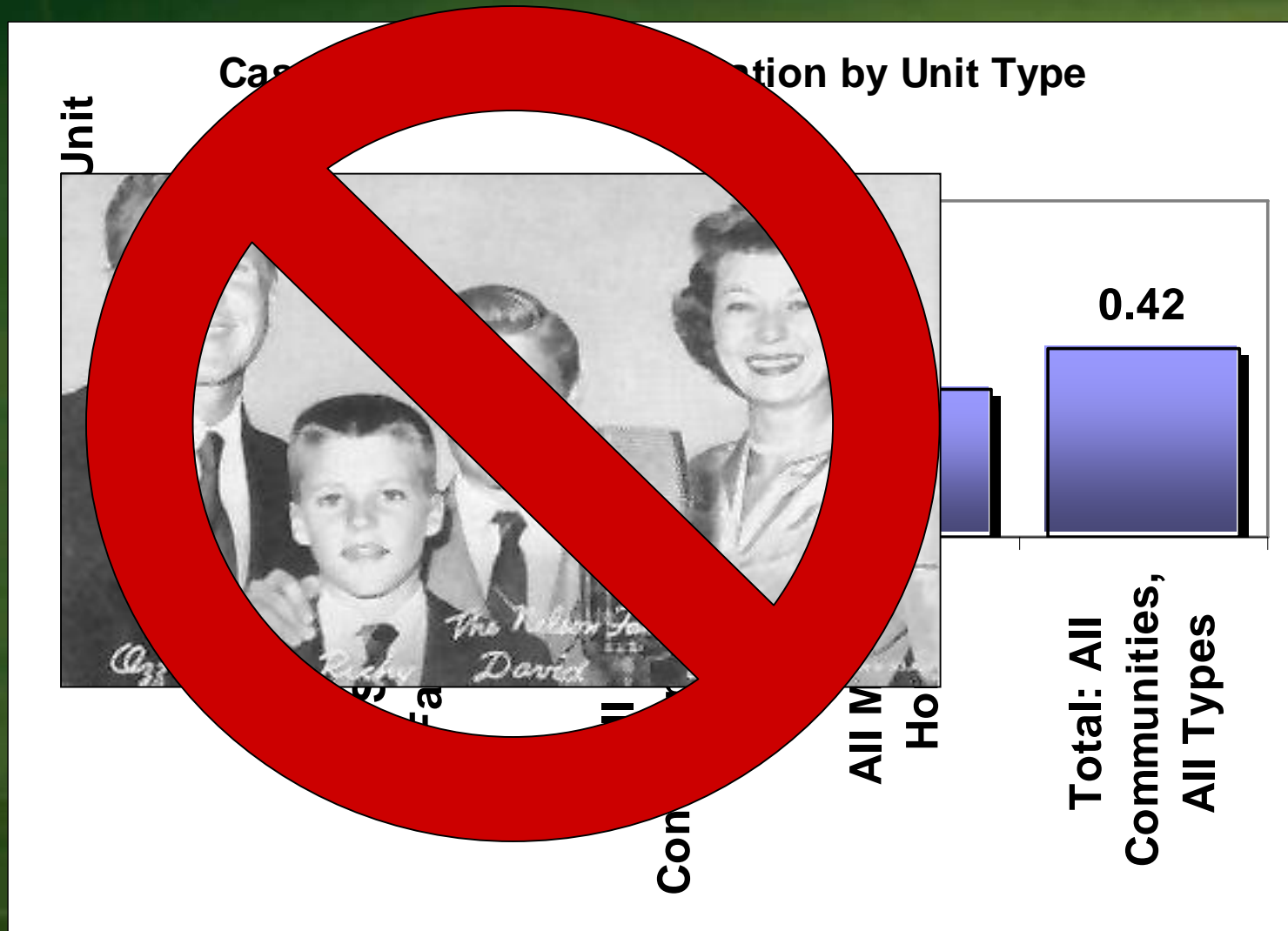
- Bedford, suburban in metropolitan setting
- Hudson, southern NH bedroom community
- Lebanon, small city not in metro area
- Rochester, larger city with diversity of new housing types

Identify new units built in those communities (between 1998 – 2004)

Count the public school enrollees living in those units (match enrollment addresses)



# Survey of 3,400 New Units



Meeting Your Housing  
Obligation



# Economic Impact of a Constrained Housing Supply

## *The Shapiro Study (2005)*

<i>Indicator</i>	<i>Range (million \$ 2004)</i>
Personal Income	\$57 - \$121
Gross State Product	\$110 - \$253
Residential Investment	\$27 - \$128
Other Investment	\$14 - \$43
Sales	\$158 - \$412
State and Local Tax Revenues	\$21 - \$33

***The Bottom Line: Jobs Lost  
1,300 – 2,800 annually***





# Human and Social Impacts of a Constrained Housing Supply

Less housing choice

Overpayment for shelter

Doubling up / Substandard units

More demand on public subsidies

Displacement

Shift in the character of the homeless (more working families)

Longer commutes / Child care costs

Less community participation



# Employer Impacts of a Constrained Housing Supply

- Higher Absenteeism
- Difficulty in Recruiting
- Lower Retention Rate
  - Increased Training Costs
- Upward Pressure on Wages
- Reduced morale and productivity



# Act IV

## Just Do It

***Tools You Can Use to Help  
Make Affordable Housing  
Happen***



# **Accessory Dwelling Units**

**RSA 674:21, Innovative Land Uses**

**Need not be restricted to “blood relatives.”**

**Difficult to enforce**

**May be attached or detached (e.g., room above a garage, or backyard “servants’ quarters”)**

**Can be virtually undetectable**

**Permitted by right or by special exception**

**Some level of control may be beneficial**





# Mixed Uses

**Contrary to “Euclidean” zoning**

**RSA 674:21, I(h) “performance standards”**

**RSA 9-B:3 State’s definition of “smart growth” specifically identifies mixed use development**

**Combine with neighborhood planning as part of master plan (RSA 672:2(j))**





# **Community Revitalization Tax Relief Incentive**

**RSA 79-E (2006)**

**Allows for limited time relief from increases  
to taxes attributable to rehabilitation**

**Potential for additional relief for creation of  
affordable housing units**

**Requires initial town meeting action**



# Inclusionary Zoning

RSA 674:21,IV(a): "Inclusionary zoning" means land use control regulations which provide

- a **voluntary incentive** or benefit to a property owner
- to **induce** the property owner
- to **produce housing units**
- which are **affordable** to persons or families of low and moderate income

Should municipalities be allowed to mandate inclusionary zoning?



# Inclusionary Zoning

Should municipalities be allowed to mandate inclusionary zoning?

- Without standards, municipalities might impose inclusionary requirements that cannot be met economically by a developer
- SB 95 (2003) would have allowed for mandatory inclusionary zoning requirements; in various iterations of the bill, standards were provided (e.g., no more than 20% of a development could be required to be “affordable”)



# Creating Affordable Housing

**Smaller Lot Sizes**  
**Increased Density**  
**Cluster Development**  
**Mixed Use**  
**Village Plan**  
**Alternative**  
**TIF Districts**

**Public/Private**  
**Partnerships**  
**Multi-Family Homes**  
**Manufactured Homes**  
**Smaller Homes**  
**Accessory Units**  
**Inclusionary Zoning**





# **Applicability**

**Require Conditional Use Permit (RSA 674:21,I)**

## **Permitted Location**

- **Specified Zones,**
- **All Residential Zones, or**
- **Town-wide**

## **Permitted Uses**

**Planning Board decision appealed to Superior Court (RSA 676:5,III)**





# Definitions

## Assets and Income tied to Fed Reg's Income

- Low < 50% AMI
- Moderate 50-80% AMI
- Moderate to Median 80-100% AMI

## Housing Cost Burden – 30%



# Incentives

**Possibilities include:**

**Density Bonuses**

**Relaxed Regulations**

**Expedited Permit/Application Review**

**Financial Assistance**

**Exemption from Fees**

**Exemption from Phasing**



# Incentives

## Affordable Housing Categories & Incentives

Housing Type	Set Aside	Density Bonus/ Minimum Site Frontage Reduction
Low Income Rental Housing	15 to 25%	15 to 25%
Moderate Income Rental Housing	20 to 30%	15 to 25%
Low Income Owner-occupied Housing	5 to 10%	15 to 25%
Moderate Income Owner-occupied Housing	10 to 20%	15 to 25%
Moderate to Median Income Owner-occupied Housing	15 to 25%	15 to 25%

***These are just examples—you have to figure out what works in your community. What will induce the developers to do this?***



# Requirements

**Compatibility of Style**

**Interspersed Throughout**

**Project Phasing**

**Income Certification**

**Project Affordability Verification**





# **Administration, Compliance and Monitoring**

**Establish Administrative Entity**

**Certificate of Occupancy Requirements**

**Establish Monitors**

**Annual Reporting Requirements**



# Assurance of Continued Affordability

Binding Commitment

Maximum Resale Value

Maximum Rent Increase

Documentation of Restrictions

- Planning Board Records
- Registry of Deeds



# Affordability Retention Model: Basic Principles

Long-term affordability

- Initial sale—80% AMI; Subsequent—up to 120%

Fairness to all

- Municipality / Developer / Buyer

Little impact on conventional financing

- Trap door

No decrease in local tax revenues

Ease of administration

Market based

Suitable for use with inclusionary zoning ordinances



# Converting Incentives to Subsidies

*Incentives:* Inclusionary Zoning

- Density bonus and others

*The Regulatory Crux:* Developer must receive something of value, which in turn allows the purchase price to be lower—a quid pro quo

*Subsidy:* There must be a measurable subsidy to future buyers that can stay with the property and be passed to the next buyer

*Converting* the incentive to the subsidy is the municipality's role





# Example Municipal Ordinance

*Inclusionary zoning* provides a density bonus in exchange for some affordable units

*Base value* of all units must be similar in construction, appearance, and value to others

Affordable units must be sold at less than base value  
(creating the subsidy)

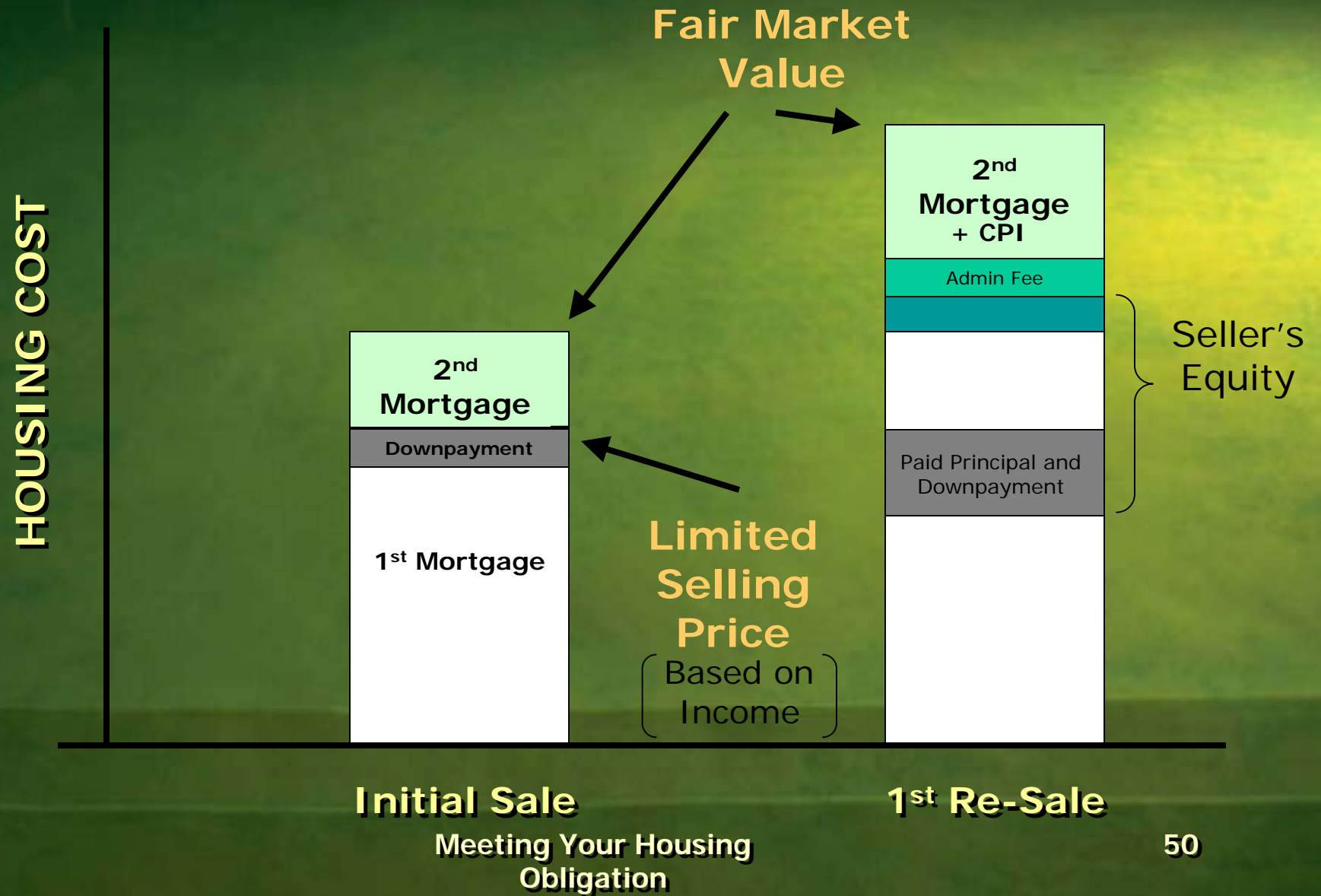
*Lien:* When affordable units are sold, a lien to the municipality is recorded (value of subsidy accrues to municipality)

- Lien value = FMV – affordable sale price

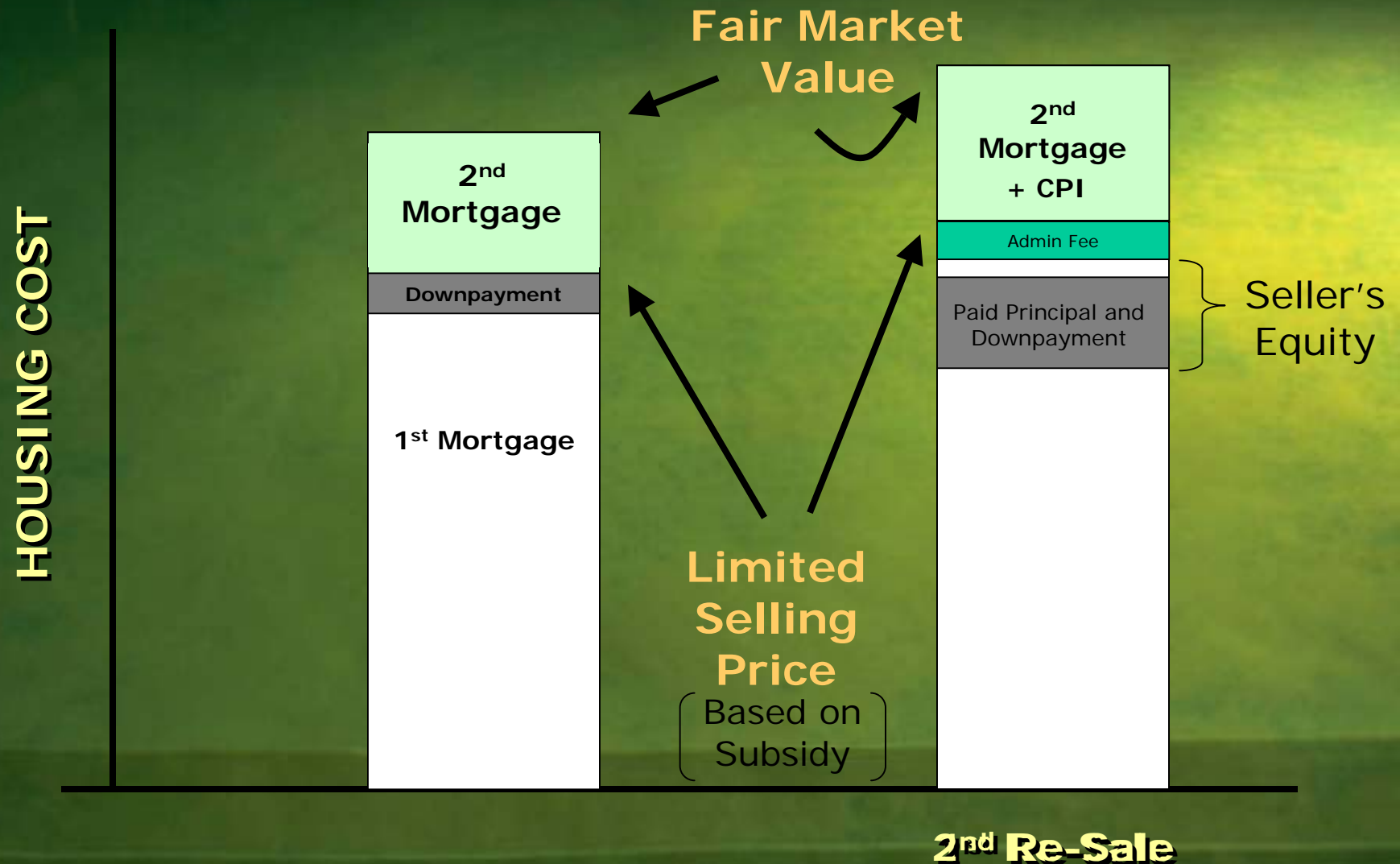
*Restrictive covenant* is filed, controlling future sale price and limiting future buyer's income



# Sales Under the Subsidy Retention Model



# Sales Under the Subsidy Retention Model



# Administrative Tasks

Income Testing

Calculations of Price and Income Caps

Verification of Home Buyer Training

Municipally Required Buyer Priorities

Procurement of Appraisals

Second Mortgage Issuance

Participation at Closings

Subordination Requests

Pay-offs, foreclosures

Reporting

**Most occur at the  
time of property  
transfer**





# Considerations

Most municipalities don't want to administer the long term covenants or qualify buyers

Other local or regional entities may lack the capacity, credibility, longevity, or desire to administer the requirements

The model is suitable for use with an inclusionary zoning ordinance

If local or regional entities are not available to administer the re-sales, New Hampshire Housing might do it



# Act V

**With a Little Help From My Friends**  
***Collaboration and Cooperation***



# Growth and Development Roundtable

## SB 217: Housing and Conservation Planning Program

Incentive-based approach to offer communities technical support to treat housing development, economic planning, and conservation as part of a unified planning strategy

- Four stages of matching funds
  1. Housing and natural resource data collection
  2. Creation of a municipal Growth and Development Strategy
  3. Amendment of local master plan
  4. Audit and amendment of local land use ordinances and regulations







## What is Workforce Housing?

"Workforce Housing" means a broad range of owner and renter housing, meeting the needs of families and individuals that represent the majority of New Hampshire's diverse workforce and whose income is generally below 120% of the area median.

Workforce Housing is permanent housing, intended as a primary year-round residence, that is available to households regardless of age.

Workforce Housing can include, but is not limited to, subsidized and affordable housing. It is best provided near places of employment.



Housing for  
a healthy  
economy  
and strong  
communities

The Workforce Housing Council (WHC) is a statewide organization that promotes ways to increase and diversify the supply of housing so employers will view our state as an attractive place to live and work.



### Events Calendar

[Click here for a listing of housing seminars, classes and workshops throughout NH.](#)



### Links to related sites

[View all local and regional organizations that serve the housing needs of New Hampshire.](#)



### Document Center

[Click here to view our library of housing related white papers, studies and articles.](#)

## News & Articles

[view all](#)

**Tue, Apr. 3, 2007**

120 affordable units to be built soon in Hanover

[read more](#) →

**Mon, Apr. 2, 2007**

Housing shortage hinders business

[read more](#) →

**Thu, Mar. 29, 2007**

Housing Challenges

[read more](#) →

**Thu, Mar. 29, 2007**

NH Remains Most Livable State

[read more](#) →

**Thu, Mar. 29, 2007**

Americans Cite Importance of Affordable Housing

[read more](#) →

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your region's  
housing Coalition?**

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# www.workforcehousingnh.com

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# Regional Workforce Housing Coalitions

**2001**

- *Seacoast, Upper Valley*

**2004**

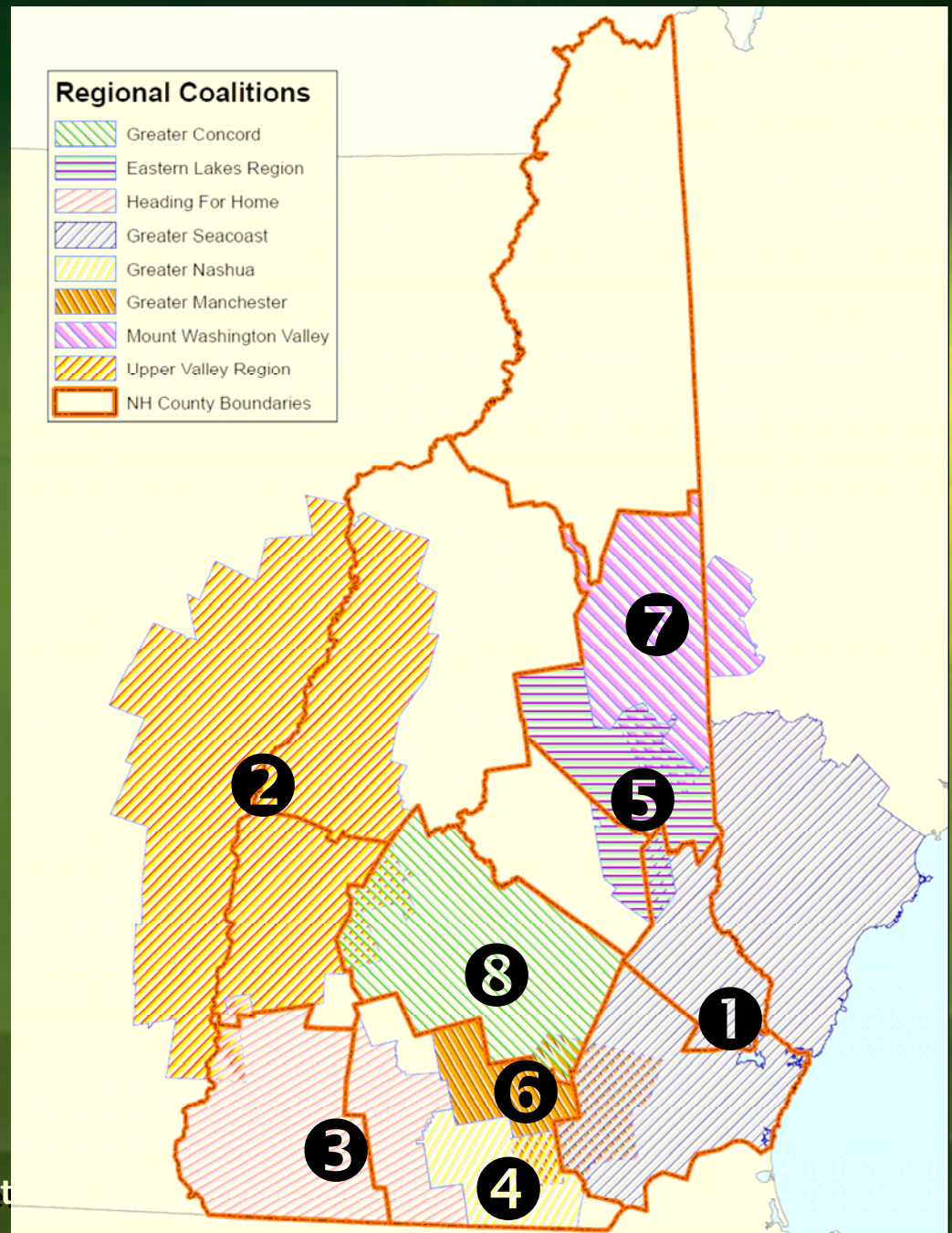
- *Monadnock*

**2005**

- *Nashua, Eastern Lakes*

**2007**

- *Manchester, Concord, Mt. Washington Valley*



Meet  
Congation

# Help With Inclusionary Zoning

DES model—created as part of the Innovative  
Land Use Planning Techniques Handbook

[www.des.state.nh.us/REPP/](http://www.des.state.nh.us/REPP/)

New Hampshire Housing and others are  
preparing a grant program for municipalities  
to develop inclusionary zoning

\$10K for successful applicants to hire qualified  
consultants

Stay tuned...July 2007



*Finis*

Ben Frost  
(603) 310-9361  
bfrost@nhhfa.org

